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October 15, 1952
Op. No. 52-272

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10/20/52 ✓
Mr. J. N. Brennen, Manager
State Labor Department
Arizona State Building
Phoenix, Arizona

Dear Sir:

This is in reply to your letter of September 29, 1952,
wherein you request our opinion on the following matter:

"On August 2, 1952, your office handed down Opinion #52-223, as to the application of Section 55-514, Arizona Code Annotated 1939, which states that this statute is also applicable to the primary elections.

On September 9, 1952, the day of the primaries, the Goodyear Aircraft Corporation at Avondale refused to let its employees absent themselves from work in order to vote.

The right was refused because each individual person did not request the privilege. However, the Business Agent, F. B. Dunmire, International Association of Machinists, District #49, who is the recognized bargaining agent for all the employees of Goodyear Aircraft, requested permission in behalf of all registered voters employed by Goodyear Aircraft.

* * * * *

We solicit a written opinion in the matter in order to clarify the situation and to have Goodyear Aircraft come in compliance."

Section 55-514, ACA 1939, provides:

"Employee to be given time to vote--Penalty on employer.-- Any person entitled to vote at a general election held within this state may, on the day of such election, absent himself from the service or employment at which he is then employed for a period of two (2) hours between the time of opening and of closing the polls; and such voter shall not, because of so absenting, be liable to any penalty, nor shall any deduction be made therefor from his usual salary or wages; provided, however, that application shall be made for such absence prior to the day of election, and the employer may specify the hours during which the employee may absent himself. Any person who shall refuse to an employee the privilege hereby conferred, or who shall subject an employee to a penalty or reduction of wages therefor, or who shall, directly or indirectly, violate the provisions of this section, shall be guilty of a misdemeanor." (Emphasis supplied)

Please note that the statute does not provide any specific manner in which the employee must make application for time off to vote. The statute merely states that he shall make such application prior to election day. The law further provides, however, that the employer may specify the hours during which the employee may absent himself. It is apparent, therefore, that the application must be made in such manner as to afford the employer notice of the employee's intention to absent himself for the purpose of voting and to enable the employer to determine the hours when the employee may absent himself. As a general proposition, a person who is sui juris may appoint an agent for any purpose whatsoever. In other words, a person who has capacity to effect his legal relations by the giving of consent, has capacity to authorize an agent to act for him with the same effect as if he were to act in person. We see no legal prohibition against a duly recognized bargaining agent making application for time off on behalf of the employees he represents if he makes such application within the time provided by law. However, it is our opinion that such application should state the names of the employees and their shifts in order to enable the employer to designate the hours

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when each employee may absent himself. We do not feel that a blanket request on behalf of "all registered voters" would be sufficient. Such a request would put an undue burden on the employer to determine which of his employees are registered voters and their particular shifts.

Trusting that this sufficiently answers your inquiry,
we are

Sincerely yours,

FRED O. WILSON
Attorney General

ROBERT K. PARK
Assistant Attorney General

RKP:f